

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YUDELKA E. PEREZ, MARITZA A. CORTES :
on behalf of themselves and all other similarly :
situated persons, :
: Plaintiff, :
: v. : CIV. NO. 13 CV-07453(:
: Defendant. :
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DECLARATION OF MARITZA A. CORTES

I, Maritza A. Cortes, hereby state to the best of my personal knowledge and belief:

1. I am a resident of New York County, New York and am over the age of 18. I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

General Background & Employment History

2. I worked as a certified nurse aide (“CNA”) for Isabella Geriatric Center, Inc. (“Isabella” or “Defendant”) from October 2009 until the termination of my employment in March of 2013.
3. During my employment with Isabella I was paid an hourly wage. I received a pay check every two weeks. When my employment terminated I was making an hourly rate of \$16.5951.
4. Isabella scheduled me to work an eight hour shift from 7:30 am until 3:30 pm, five days per week. I was paid seven hours for each shift because each day one hour was deducted for an unpaid lunch.
5. During my employment with Isabella I was assigned to work on different floors throughout both of Isabella’s two buildings. I was considered a “floater” throughout my

employment and was assigned to work wherever I was needed. I believe that I worked on every floor in each of Isabella's two buildings at some point during my employment.

6. As a CNA, my job duties required me to help Isabella's residents with all aspects of their activities of daily living.
7. At the beginning of each shift there would be a floor staff report meeting which all CNAs on the floor were required to attend. At this meeting each of the other CNAs and I would be assigned individual residents to care for that day. Normally each CNA was assigned eight residents. However, when CNAs called out Isabella would not try to replace them. Instead each CNA would be assigned two or three additional residents to care for.
8. All of the CNAs who worked at Isabella were assigned to perform the same or similar duties, caring for the residents who were assigned to them.
9. I, and the other CNAs, were responsible for all aspects of the personal care of our assigned residents. Among other things, I helped my assigned resident eat, bathe, brush his/her teeth, dress, toilet, and I would change his/her diapers when they were soiled.
10. We also were responsible for keeping the environment in which the residents lived clean and neat. While other employees were assigned to do the heavy cleaning, I would do light cleaning; I changed the bed linens each day, cleaned up spills, and made sure that the residents' belongings were neat and organized.
11. In addition, many of the residents required a lot of individual attention and time spent one-on-one.
12. In addition to caring for the residents assigned to us each CNA had to help other CNAs with transfers. I would also help residents who were not assigned to me and needed help get assistance.
13. All CNAs were required to record information about the shift at the end of the shift. Each day I would record information about my assigned residents in books regarding "toileting" and "turn and position." I would also enter information into the computer.
14. Twelve times a year each CNA was required to spend one hour at in-service training. Isabella did not reduce our workload on those days. We were expected to complete all our responsibilities even though we had one hour less in which to complete our assignments.

15. From my observations on in both of Isabella's buildings and on different floors, I know that all of the CNAs who worked at Isabella were assigned to perform the same or similar duties.

"Off-the-Clock" Work

16. Most days I was not able to do all the work that was assigned to me within my scheduled hours and I had to work more time than I was scheduled for.

17. Other CNAs also had a problem finishing their work and I often saw other CNAs – throughout Isabella's facilities - working more time than they were scheduled for.

18. In particular I often had to work through much of my unpaid lunch and almost every day I had to work after the scheduled end of my shift. .

Work During Unpaid Lunch

19. Even though I, and the other CNAs, were not paid for lunch, Isabella's policy was that we were not to punch in and out for lunch. We only punched in and out at the beginning and end of our shifts. As a result no record was kept of when and how long my lunch break actually was.

20. Each day I had so much work that there was no time to take a full hour lunch.

21. Most days I worked through at least one half hour of my lunch. Often, I only had fifteen or twenty minutes to quickly grab some food. Working through lunch was not voluntary and was required because if I had not worked through my lunch I would have had a lot of work to complete after the end of my shift.

22. On every floor and in both buildings there was so much work that I was forced to work through my lunch.

23. My supervisors knew that I was working during my lunch period because they scheduled my lunch and they were on the floor and could see that I was working during my lunch periods.

24. Even though I worked through at least half of my lunch each day, Isabella had a policy of automatically deducting a full hour for lunch from the pay of all the CNAs, including me, regardless of whether or not we took a full or partial lunch or not. As a result I estimate that I worked between two-and-one-half and three-and-one-half-hours each week without pay during my scheduled lunches.

25. I regularly observed other CNAs working through their lunch as well. On all the floors on which I worked and in both buildings I would see other CNAs working during their lunch period.

Work After End of Scheduled Shift

26. I was assigned so much work that I was almost never able to finish by 3:30 pm when my shift was scheduled to end.
27. Even if by the end of my shift I was able to finish caring for the residents who were assigned to me, at the end of my shift I was also required to record information about the shift in the computer and in a record book.
28. Isabella assigned too many residents who needed a lot of care to me for me to record this information before the CNA who was replacing me started work at 3:30 pm.
29. When I tried to record the information before my replacement began work I would be called away to help residents who needed help. Often residents would need to go to the toilet or be cleaned up or need other help and Isabella expected me to respond promptly to their demands for help.
30. As a result I almost always finished my work at 3:45 pm or later.
31. I would punch out at the time that I actually finished work, but, on information and belief, I was only paid for my hours until the end of my shift at 3:30 pm. I was not paid the extra quarter to or more than I worked each day after my scheduled shift ended. As a result I estimate that each week after the end of my scheduled shift I worked approximately one and one half hours for which I was not paid.
32. Whichever floor I was working on each day I would see other CNAs working past the end of their scheduled shifts as well. I often saw other CNAs recording information in the book or the computer after their scheduled shifts had ended.
33. I talked with other CNAs in both buildings and on different floors and they told me that they also were assigned so much work that they had to work past the end of their scheduled shifts.

Amount of Unpaid Work

34. I, and the other CNAs, worked unpaid time because we were assigned more to do than it was possible to complete within our scheduled hours. Working unpaid time was also

caused by Isabella's policy of automatically deducting an hour for lunch even on days that we did not get to take our lunch or part of our lunch.

35. I estimate that I worked between four and five-and-one-half unpaid hours each week.
36. I personally observed other CNAs working similar amounts of time outside their scheduled hours on each of the floors on which I worked and in both of Isabella's buildings.
37. Although my supervisors on each of the floors regularly observed me and the other CNAs working during our lunch and after our shift ended, Isabella kept on giving us more work to do. When a CNA called out sick, Isabella did not try to replace the hours. Instead each CNA would be assigned two more residents to care for in addition to the residents for which we were already responsible.
38. I talked with other CNAs throughout both buildings. No matter which floor they worked on each CNA with whom I talked said that they were not able to complete their work within their scheduled hours and often had to work through lunch or after the end of their shift. Everyone was scared to do anything about this because they thought that they might lose their job if they did not complete their work even if it meant working time for which they were not paid.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 4, 2014


MARITZA A. CORTES